

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RONDA M EICK
Claimant

APPEAL NO: 07A-UI-04647-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HAWKEYE COMMUNITY COLLEGE
Employer

**OC: 04/08/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Hawkeye Community College (employer) appealed a representative's April 26, 2007 decision (reference 01) that concluded Ronda M. Eick (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2007. The claimant participated in the hearing. John Clopton, the executive director of human resource services, testified on the employer's behalf. Jody Dinsdale observed the hearing. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work connected misconduct or gross misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2005 as an adjunct professor. Since August 2005, the employer hired the claimant as a nursing instructor to teach a class or classes each session.

In March 2007, the claimant worked as a nursing instructor at a local hospital teaching a clinical for students attending classes through the employer. The claimant and her nursing students knew a department in the hospital was doing a fundraising project by selling t-shirts. The money from the t-shirt sale was not locked up and everyone had access to the money.

On March 30, a physician from the hospital department called the claimant and asked her for the names of her nursing students because the fundraising money was missing. The claimant provided the names of the students. Later that night, the claimant heard a noise outside her home and discovered a bag with money in it. The claimant took the money to the hospital and reported what had happened to the hospital officials. The claimant also reported the incident to the employer.

On April 6, the local police asked the claimant to talk to a police investigator. The claimant told the investigator that as an instructor she had the ultimate responsibility of her students, but she had not taken the money from the hospital and did not know who did. The investigator reported the claimant had admitted to the theft of the money. (Employer Exhibit One.) The claimant was charged with third degree theft. As of the date of the hearing, the claimant has not gone to court.

After the claimant talked to the police investigator, she told Clopton she had talked to the police. The claimant denied she had taken any money from the hospital. The claimant explained some problems she had with some of the employees at the hospital. On April 6, 2007, the employer suspended the claimant so the employer could investigate the missing money issue.

On April 9, the employer received information the claimant had been charged with third degree theft. The hospital also informed the employer that neither the claimant nor any of her students were welcome at the hospital any more. On April 9, the employer discharged the claimant because a police investigator reported the claimant admitted she took the fundraising money on March 30, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Instead of completing its own investigation by talking to the claimant and the students she taught, the employer relied on the fact the claimant was charged with third degree theft and an investigator reported the claimant admitted to the theft. For unemployment insurance purposes, the facts do not establish that the claimant took the money or committed any work-connected misconduct.

The fact the claimant was charged with third degree theft does not mean she took the money. Based on an investigator's assertion the claimant admitted to the theft of the money, the judicial system deemed there was probable cause to arrest and charge the claimant. Although the claimant has been charged, as of the date of the hearing she has not gone to court and the pending charge has not been resolved.

Since the police investigator did not participate in the hearing, his assertion that the claimant admitted to the theft is unsupported hearsay information. The claimant's testimony is credible and must be given more weight than police investigator's assertions stated in a report. A preponderance of the credible evidence does not establish that the claimant committed work-connected misconduct. Since the claimant did not commit work-connected misconduct, she did not commit gross misconduct either. Therefore, as of April 8, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 26, 2007 decision reference 01) is affirmed. The employer discharged the claimant for business reasons. The evidence does not establish that the claimant committed work-connected misconduct. As of April 8, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs